# IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr. A. No. 588 of 2000

Date of Decision: 16.11.2007

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State of H.P. … Appellant

Versus

Balbir Singh … Respondent.

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Coram:

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

***Whether approved for reporting?***

For the Appellant : Mr. J.S.Guleria, Law Officer.

For the Respondent(s) : Mr. Ashok Sharma, Advocate.

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Deepak Gupta, J (Oral).

This appeal by the State is directed against the judgment delivered by the Judicial Magistrate Ist Class (II), Dharamsala, acquitting the accused of having committed an offence under Section 353 of the Indian Penal Code.

Complainant Chandu Lal is the Pradhan of Gram Panchayat, Kalyara. He made a written complaint Ex.PW1/A to the police to the effect that on 4.4.1998 a meeting of the Gram Panchayat had been called and when the meeting was going in the Panchayat Ghar, Up-Pradhan Balbir Singh came there and started abusing the complainant. The accused was accompanied by a number of ladies. He came into the room, picked up a chair and attacked the complainant. Some people intervened and caught hold of the chair but it struck against the head of the complainant.. The

accused thereafter again picked up the chair and hit the complainant as a result of which he fell down. When he got up one lady caught hold of him and the accused hit him with kick and fist blows and threatened the complainant that he would kill him. It is further stated that the fight took place because the accused was making a false allegation that the complainant had stopped the distribution of sugar. It would be pertinent to mention that neither the names of the persons present nor the names of any of the ladies alleged to be accompanying the accused were mentioned in the complaint.

After investigation, challan was filed in Court. The accused pleaded not guilty and claimed trial.

Complainant appeared as PW1 and made a statement supporting the complaint. There are minor discrepancies in his statement. In cross-examination, he has stated that notice of the meeting was given seven days in advance. Neither any notice nor any other document has been produced to show that the meeting had been fixed on 4.4.1998. He has also admitted that next to the Gram Panchayat Ghar where the incident took place, the houses of Roshan Lal and his brother are situated and people reside in these houses. He admitted that he and the accused belong to different political parties.

PW2 is Charan Dass, a Panch. According to him, in his presence the accused sat down on a chair and verbal abuses were exchanged between the accused and the complainant. Then the accused lifted a chair and attacked the Pradhan. The witness caught hold of the chair but the Pradhan fell down. Thereafter,

they caught hold of the accused. In cross-examination, this witness has stated that his statement was recorded under Section 161 Cr.P.C. It would be pertinent to mention that in the statement so recorded, there is no mention of the accused having abused the complainant. Similarly, there is no mention that the accused lifted a chair and hit the complainant. Similarly in the said statement, there is no mention of the fact that the complainant fell down. He admits that the Secretary of the Gram Panchayat had filed some case against the accused and he is also a witness in that case and that both of them belong to different political parties. It would also be relevant to mention that this witness makes no mention of any ladies having entered the room along with the accused.

The Secretary appeared as PW3. He has made a statement similar to that of PW2. He also did not produce any record with regard to the issuance of notice of the meeting on 4.4.1998. In his statement recorded under Section 161 Cr.P.C, there is mention of the fact that the accused hit the Pradhan with a chair etc and similarly there is no mention of the ladies having come with the accused.

The statement of PW4 is also virtually identical. It is obvious that the statements of the witnesses are tutored statements. In their statements recorded under Section 161 Cr.P.C. they have not stated what they are now alleging in Court. The names of the witnesses were not mentioned in the complaint. In their statements under Section 161 Cr.P.C. they had not stated that the accused had picked up a chair or that the Pradhan had fallen down. Their version is totally different than the version given by them to the

police. There is no mention of any ladies accompanying the accused.

Keeping all these circumstances, I am of the view that the learned trial Court has rightly acquitted the accused. No interference is called for. The appeal is accordingly dismissed. Bail bonds furnished by the accused-respondent shall stand discharged.

November 16, 2007. ( Deepak Gupta ), J.

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